

EXECUTIVE OFFICER SUMMARY REPORT
June 10, 2004

ITEM: 14

SUBJECT: KB Home Coastal Inc: Administrative Civil Liability containing a \$12,000 Mandatory Minimum Penalty against KB Home Coastal Inc. for violation of effluent limitations established by Order No. 2001-96, NPDES No. CAG919002, Waste Discharge Requirements for Groundwater Extraction and Similar Waste Discharges from Construction and Remediation Projects to Surface Waters Within the San Diego Region, Except for San Diego Bay.

If the discharger waives its right to a hearing, the matter will be postponed to a subsequent meeting to allow for a 30 day public review period. (Tentative Order No. R9-2004-0193, *Supporting Document No. 3*) (*Sabine Knedlik*)

PURPOSE: To accept testimony from KB Home Coastal Inc., Regional Board staff, and the public regarding the allegations and recommendation of civil liability in Complaint No. R9-2004-0116 (*Supporting Document No. 4*) prior to deciding whether to adopt tentative Order No. R9-2004-0193.

PUBLIC NOTICE: A public notice for the June 9, 2004 Regional Board meeting on this matter was issued on May 10, 2004 through the San Diego Union Tribune. Since the June 9, 2004 meeting was moved to June 10, 2004, a notice of the change was posted in the "Notification" section of the Regional Board Agenda and on the Regional Board web site.

DISCUSSION: On January 7, 2004 KB Home Coastal Inc. discharged extracted groundwater to the San Luis Rey River from the Mar Lado Pump Station Construction Dewatering in violation of four effluent limitations, including Total Nitrogen Instantaneous Maximum, Total Nitrogen Average Monthly, Total Phosphorus Instantaneous Maximum, and Total Phosphorus Average Monthly. KB Home Coastal Inc. reported the violations in the Discharger Monitoring Reports, submitted to the Regional Board on March 11, 2004 (*Supporting Document No. 2*). The Monitoring Report also stated that the project was completed and the flow was discontinued effective January 7, 2004.

In accordance with California Water Code Section 13385(h) each of the four violations are defined as serious violations and subject to

Mandatory Minimum Penalties (MMP) of three thousand dollars (\$3,000) each.

Water Code Section 13385(h)(2) states that a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more. Total Nitrogen and Total Phosphorus are Group I pollutants.

Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation. Under Water Code section 13385(h) the amount of the mandatory minimum penalty that must be assessed is \$12,000 for the serious violation.

On April 23, 2004 the Executive Officer issued Complaint No. R9-2004-0116 against KB Home Coastal Inc for Administrative Civil Liability (ACL) containing Mandatory Minimum Penalties (MMP) in the amount of \$12,000.

Consideration of the factors prescribed in the California Water Code Section 13385(e), based upon information available to the Regional Board, supports assessment of civil liability pursuant to Water Code Section 13385(h) in the amount of \$12,000.

On May 24, 2004 KB Costal Home Inc. reported its intent to appear at the June 10, 2004 Regional Board meeting and would not waive its right to a public hearing. Pure Effect, Inc., on behalf of KB, will be submitting the documentation in support of KB’s position before 5:00 pm on May 26, 2004.

No comments concerning this matter have been received during the 30-day comment period.

LEGAL CONCERNS:

None

SUPPORTING
DOCUMENTS:

1. Site map
2. Violation Summary
3. Tentative ACL Order No. R9-2004-0193
4. ACL Complaint No. R9-2004-0116

RECOMMENDATION:

Adoption of tentative Order No. R9-2004-0193.